

CGM

SOLID WASTE DISPOSAL CONTRACT



This Agreement entered into this 29th day of March, 19 71 by and between Miles Laboratories, Inc., an Indiana corporation having its principal place of business at 1127 Myrtle Street, Elkhart, Indiana (hereinafter referred to as "Miles") and Himco Waste-Away Service, Inc., an Indiana corporation having its principal place of business at 707 North Wildwood Avenue, Elkhart, Indiana 46514 (hereinafter referred to as "Himco").

WITNESSETH THAT:

1. Himco agrees to perform the following work for and upon the premises of owner in Elkhart, Indiana, as Miles may direct:

Furnish supervision, labor, materials, tools and equipment to remove waste materials from Miles' building locations as follows:

From Miles' Citric Acid Plant, known as Building No. 4, (Location A and G), McNaughton Street (hereinafter referred to as Miles' Citric Acid Plant), remove such waste as may be deposited in Himco's containers of approximately 16 cubic yards capacity.

From Miles' property location designated as Building No. 4, Maintenance Shop Door, (Location B), remove such waste as may be deposited in Himco's container approximately nine (9) cubic yards capacity. From location designated as Building No. 1, (Location C), remove such waste as may be deposited in Himco's containers of approximately twenty (20) cubic yards capacity. From location designated as Building No. 3, (Location D), remove such waste as may be deposited in Himco's containers of approximately 14 cubic yards capacity. From the location designated as Building 17 (Location E), remove such wastes as may be deposited in Himco's containers of approximately fourteen (14) cubic yards capacity. From the location known as Nappanee Street Warehouse, (Location F), remove any

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such waste as may be deposited in Himco's containers of approximately 16 cubic yards capacity.

2. Himco agrees to provide at all times sufficient empty containers at the places designated herein, based on average monthly experience, and to keep said containers painted and in presentable repair. Within thirty (30) days after notice from Miles, Himco agrees to furnish temporary containers not to exceed two (2), at such places in the Elkhart area as Miles may designate, other than the places designated herein. Himco further agrees to provide adequate disposal locations at all times to grade such locations to provide reasonably adequate drainage. Himco further agrees to cover waste removed from Miles' Citric Acid Plant and deposited at such disposal locations with at least six (6) inches of earth at least once each week. This waste whether segregated or commingled with other waste shall be kept a minimum of 50 feet away from any open swamp water. If for operational reasons it is necessary to move the calcium sulfate closer than 50 feet to the open swamp water, Himco will notify Miles Laboratories Incorporated's representative by telephone of the situation. As soon as possible thereafter, all possible action shall be taken to move fill that is only slowly or not at all biodegradable into the swamp to a point 50 feet or more beyond the calcium sulfate. Himco further agrees to cover other wastes such as paper, cardboard, wood, and metal (which are slowly or not at all biodegradable) and deposited in open water or swamp with earth at least once each week. Himco further agrees to cover any other wastes (which are quickly biodegradable) deposited at such disposal locations with sufficient quantities of earth, at least daily except for Saturdays, Sundays, and holidays to reduce, to the extent practicable and reasonable, offensive odors produced by such other wastes. Anything to the contrary herein notwithstanding, Himco agrees that separated mycelium waste removed from Miles' Citric Acid Plant and deposited at such disposal locations shall not be deposited in or adjacent to any stream, river, lake, pond or swamp, and Himco further agrees to cover such separated mycelium waste with at least six (6) inches of earth daily, except Saturdays, Sundays, and holidays. Himco will, as Miles may direct, cover the wastes referred to herein on Saturdays, Sundays, and hol-

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1days.

4. For the purpose of Accounting and reference, the Purchase Order's are identified by Miles' No. EBC-56198, CAP-BC-56199, and CAP 63555. All billings and correspondence pertaining to this contract shall carry the proper Purchase Order Number.
5. Himco and Miles agree that this contract will supercede and cancel all other contracts as may now be in effect between the two parties, and further agree that this contract will remain in effect from April 1st, 1971 through June 30th, 1972 subject to a ninety day written notice of termination by either party.

6. Payments to Himco shall be based upon the following rates:

<u>LOCATION</u>	<u>APPROXIMATE CONTAINER SIZE</u>	<u>PRICE PER LOAD</u>
Location A	16 cu. yd.	\$12.75
Location B	8 cu. yd.	11.25
Location C	20 cu. yd.	18.50
Location D	14 cu. yd.	11.25
Location E	14 cu. yd.	11.25
Location F	16 cu. yd.	12.75
Location G (Mycelium)	16 cu. yd.	12.75

and other locations on a temporary basis as requested by Miles at equivalent rates depending on size or necessity for special handling. Waste hauled from Miles' plant locations to other than Himco's present site on Ft. Wayne Road or waste requiring special handling shall be re-costed and rates agreed to by both parties without changing any other costs as specified in this contract. If Miles shall direct Himco to cover wastes on Saturdays, Sundays, or holidays as set out in Paragraph 2 above, it shall pay a charge of ten (\$10) dollars per hour, per man, with a minimum of four (4) hours.

7. Himco shall use all reasonable care to avoid any damage to the premises of Miles while performing services under this contract on such premises.

8. Himco agrees to take all necessary steps to prevent spillage of waste collected from Miles' premises on such premises, on public roads or on any other property not owned or leased by Himco, and Himco further agrees to be responsible for the clean-up of any such spillage. Anything herein to the contrary notwithstanding, Himco will not be responsible for the clean-up of spillage from filling operations at Miles' Citric Acid Plant. Miles agrees to exercise all reasonable care to prevent over filling or careless filling of any containers, and Miles further agrees to be responsible for the clean-up of spillage resulting from the failure to exercise such care.

9. Himco agrees to take all necessary steps at disposal locations which it maintains to prevent waste removed from Miles premises from blowing onto adjoining properties or in any other way becoming an actionable nuisance to the owners of such properties.

10. Himco agrees to indemnify, defend and save harmless Miles from and against any and all suits, actions, claims, damages or costs (including reasonable attorney's fees) for injuries to persons or damage to property arising out of Himco's negligent performance of this contract. Nothing contained herein shall, however, be construed as requiring Himco to indemnify and hold Miles harmless against any claim arising out of Miles' negligence of whatever kind or nature, or Miles' absolute liability under any rule of law.

11. During the term of this contract Himco will carry and show proof by insurance certificates to Miles of the following types of insurance and of the following amounts:

- a. Workmen's Compensation and Employers Liability Insurance - as required by the laws of the State of Indiana.
- b. Comprehensive General Public Liability Insurance in the amounts of \$100,000 - \$300,000.
- c. Automobile Bodily Injury Liability in the amount of \$100,000 - \$300,000 and,
- d. Property Damage Liability in the amount of \$50,000.
- e. Such other Liability Insurance as Miles may request up to a maximum amount of \$500,000.

12. Himco agrees that in the performance of this contract it will conform with all applicable federal, state, and local laws which might bear on the performance of its waste disposal services under this contract. This shall include but not be limited to the obtaining of all necessary permits and licenses and payment of all fees and charges in connection therewith.

13. Himco agrees to exercise all reasonable care in the performance of its waste disposal services under this contract to prevent any accidental injury to its employees, sub-contractors and others.

14. Miles agrees to exercise all reasonable care to notify Himco before Miles places any caustic, toxic, radioactive, highly flammable, explosive or hormone product or material, which could be harmful to human life and health, in any of the containers being serviced by Himco in the performance of this contract. Miles further agrees to indemnify, defend and save harmless Himco from and against any and all suits, actions, claims, damages or costs (including reasonable attorney's fees) for injuries to persons or damage to property arising out of Miles' failure to exercise such reasonable care.

15. It is understood and agreed that the status of Himco under this contract is that of an independent contractor. Nothing contained herein shall be construed as making any employee of Himco an employee of Miles nor shall anything contained herein be construed as extending any benefit of Miles to any employee of Himco.

16. Except as hereinafter provided, if Himco shall fail to perform the work according to the provisions of this contract, Miles may provide, either directly or by contract, such labor and materials as are necessary to complete the performance of the work under this contract in accordance with the provisions of this contract. Costs incurred by Miles, together with any damages sustained by Miles, may be deducted from any unpaid balance due or to become due under this contract and Himco shall remain liable to pay any costs or damages not so deducted. Himco shall be liable for the cost of such performance in excess of the price which Miles would have paid Himco for performing the work, up to a maximum of Fifty (\$50.00) Dollars per day. Himco shall be given a reasonable allowance against such costs for the use of its containers if these are used in performing the work, and Himco hereby agrees that Miles may, either directly or by contract, use said containers present on Miles' property to perform said work. It is expressly agreed by and between the parties hereto that, anything in this paragraph to the contrary notwithstanding, the failure of either party to perform its obligations under paragraphs eight (8) nine (9) and twelve (12) of this contract shall not constitute a failure to perform the work according to the provisions of this contract or a breach thereof, and shall not be the basis for damages, liquidated or otherwise, by either of the parties hereto or by any third party, but such failure to perform by either party may be a basis for termination at the option of the other party.

17. The failure of either party to perform its obligations under this contract because of fire, flood, strike or other labor disturbances or any other cause beyond its control shall not constitute a failure to perform the work according to the provisions of this contract or a breach thereof. The phrase "other cause beyond its control" shall

be construed to include any intervening or superseding local, state or federal ordinance, law, or regulation so affecting Himco's present methods of waste removal and disposal or Miles' manufacturing methods and techniques as to render performance by either party measured by such present methods, illegal.

18. Miles agrees to exercise reasonable care to advise Himco of any physical or structural changes to any part of its premises or its manufacturing operations which would affect or interfere with Himco's ability to perform the work according to the provisions of this contract.

19. The parties agree that any failure by either party to comply with any of the provisions of this contract which such failure causes either party to be unable on its part to comply with any of the provisions of this contract shall not constitute a failure on the part of Himco to perform the work according to the provisions of this contract, as that phrase is used in this contract, or a breach thereof by either party.

20. It is further agreed by the parties hereto that Himco may deposit waste collected from Miles under the provisions of this contract in the swamp area lying in the southwest corner of the forty (40) acre tract formerly known as the Cohen property lying directly north of Himco's present disposal location along Ft. Wayne Road as shown on the attached map, marked "Exhibit A", attached hereto, made a part hereof, and incorporated herein by reference. Himco agrees not to deposit waste collected from sources other than Miles, excepting wood, cardboard, glass, plastic and metal, in the said swamp area as described above. Himco further agrees to exercise reasonable care to insure that any wood, cardboard, glass, plastic or metal waste deposited in said swamp area as described above is not repeatedly and substantially contaminated by oil, sugar or similar materials.

21. This contract is made under and shall be construed according to the laws of the State of Indiana.

MILES LABORATORIES, INC.

By

B. L. Beckey

PURCHASING MANAGER

Attest:

By Geraldine A. Lantz

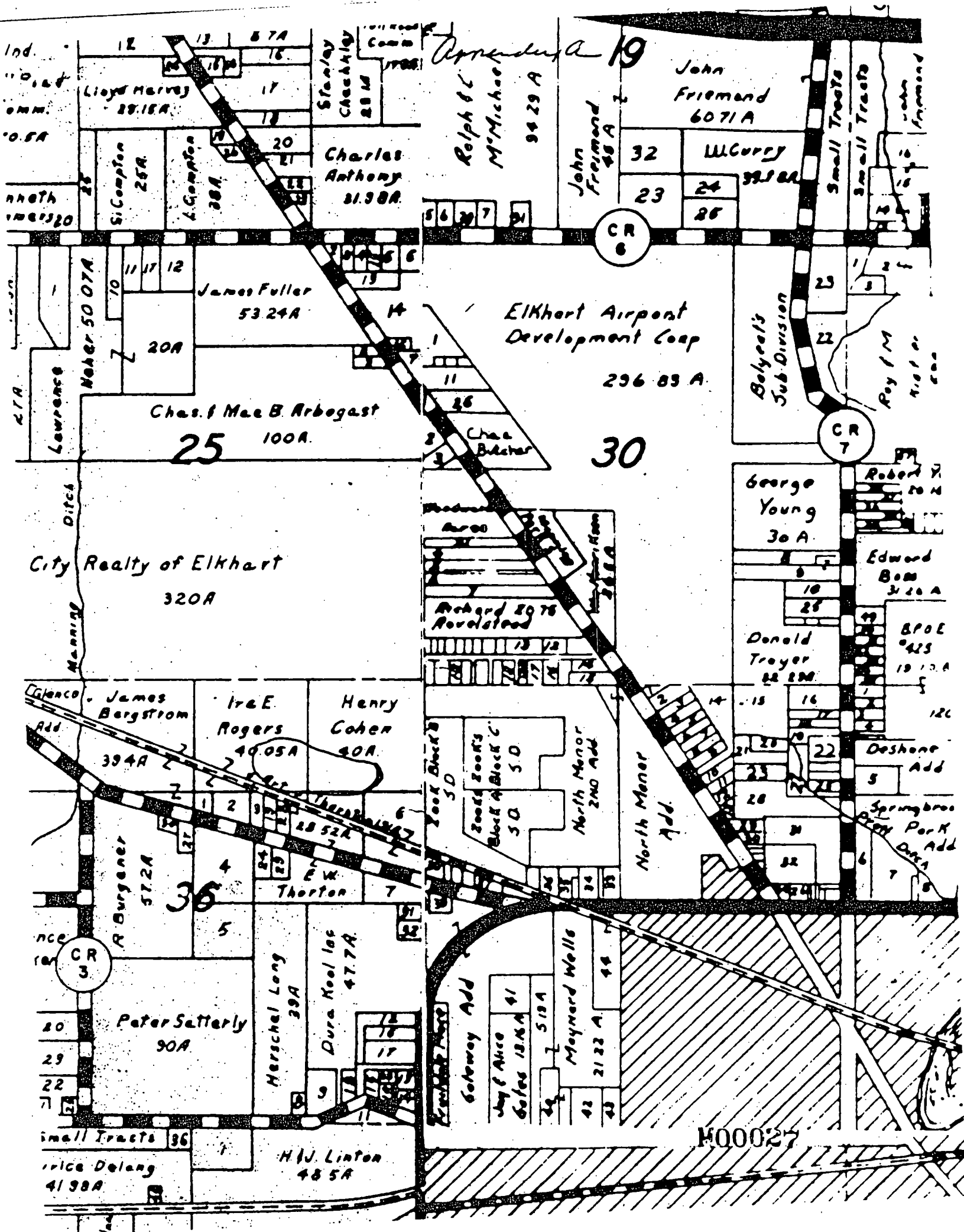
HIMCO WASTE-AWAY SERVICE, INC.

By

Chas. H. Himes Jr.
Pres.

Attest:

By B. H. Himes Jr.



Appendix A
Ralph C.
McMichael
9429 A

CR 6

CR 7

Manning Ditch

City Realty of Elkhart
320A

Elkhart Airport
Development Corp
296.83 A

Belyard's
Sub-Division

Poy / M
Hill
Hill
Hill

George
Young
30 A

Robert Y
Hill
Hill
Hill

Edward
Bom
310 A

Donald
Troyer
28.8M

870 E
925
1912 A

Deshone
Add

Springbrook
Park
Add

James
Bergstrom
394A

Ira E.
Rogers
40.05A

Henry
Cohen
40A

R. Barger
57.2A

Thorton

Thorton

Peter Satterly
90A

Herschel Long
39A

Dora Noel Inc
47.7A

H. J. Linton
48.5A

Gateway Add

Joy & Alice
6000 13.4A 41

6000 519 A

Maynard Wells
2122 A 44

42 2122 A 44

43

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